

COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION FOUR

CHURCH OF SCIENTOLOGY
INTERNATIONAL, A California nonprofit
religious corporation,

Petitioner,

vs,

SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF MARIN,

Respondent,

GERALD ARMSTRONG,

Real Parties in Interest.

Marin County Superior Court Case No.
157680

Case No.: A107100

**REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI OR, IN THE
ALTERNATIVE, A WRIT OF MANDAMUS**

**After Order re Sentences For Contempt by the Hon. Lynn Duryee,
County of Marin**

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Petitioner Church of Scientology International, submits this Reply Memorandum to Respondent Gerald Armstrong's Brief in Opposition to Petition for Writ of Certiorari or, in the Alternative, a Writ of Mandamus.

I Armstrong Offers No Legal Response to the
Petition

As addressed in the Petition, the contempt orders issued by Judge Thomas on June 3, 1997 and February 11, 1998, are final conclusive judgments, as indeed, is Judge Duryee's contempt Order of May 20, 2004. (Petitioner's Exhibits, Tabs 8, 10 and 17.)¹ Judge Duryee possessed no jurisdiction to override or alter those rulings or to discharge the sentences that had been imposed while Armstrong was a fugitive. Armstrong's Opposition Brief ignores the numerous authorities to this effect set forth in the Petition.

Similarly, the Petition addressed the substantial authority that Judge Duryee's discharge of the contempt sentences by virtue of Armstrong's mere appearance in court, was unlawful. Again, Armstrong's Opposition Brief ignores Petitioner's authority.

Finally, Armstrong provides no law refuting or responding to the numerous authorities supplied by Petitioner indicating that a compensatory damage award cannot substitute for a lawfully imposed contempt sanction.

¹ References to "Petitioner's Exhibits, Tab ___" refer to Exhibits in Support of Petition for A Writ of Certiorari or, in the alternative, a writ of mandamus, volumes I and II.

Because the entirety of the Petition is legally unrefuted, Judge Duryee's order overriding and discharging Judge Thomas's (and her own) sentences for contempt must be vacated, and the penalties for Armstrong's contempt of court reinstated.

Because Armstrong fails to address the issues raised by the Petition, the arguments in the lengthy Opposition Brief are irrelevant. In the event that the Court wishes to consider the assertions in Armstrong's Brief, Petitioner responds as follows:

II Armstrong Seeks to Argue Matters Already Fully and
Finally Adjudicated Against Him, and Other Matters Not
Properly Before
the Court

Armstrong complains at length that the 1986 contract with the Church giving rise to the injunction and contempts is unlawful for various reasons. However, the enforceability, legality, constitutionality or "great stupidity" (as Armstrong characterizes it) of the contract underlying Armstrong's repeated contemptuous acts, has been repeatedly litigated and lost by Armstrong (Petitioner's Exhibits, Tabs 5, 6, 8, 9, 10 and 13), leading to a finding by Judge Duryee that the matter is *res judicata*. (Petitioner's Exhibits, Tab 16, transcript page 56.)

Because Judge Duryee found that any issues raised by Armstrong concerning why the contract should not be enforced were barred by the doctrine of *res judicata*, and found that the contract and injunction would be

enforced, petitioners obviously did not seek review of that aspect of the Court's ruling.

Moreover, Armstrong did not seek review of the Court's ruling that *res judicata* barred relitigation of the enforceability of the contract and legality of the injunction requiring Armstrong to comply with the terms of the contract. The issues of legality and enforceability are therefore not properly before this Court.

Thus:

- whether Armstrong has been the subject of alleged torts is not before the Court;
- whether Armstrong's alleged divine instruction to disobey the Court's injunction justified his contempt is not before the Court;
- whether "Scientology's" privileged response to IRS inquiries in 1992 mentioning Armstrong justified his breaches of the contract and violations of the injunction is not before this Court;
- whether the contract is enforceable against Armstrong in Europe or Canada is not before the Court;
- whether Armstrong's filing of affidavits in federal court in 1997 properly warranted contempt findings against him is not before this Court;
- whether Armstrong's claimed religious beliefs (acquired after he entered into the contract), are violated by his compliance with the

Court's injunction is not before the Court.

Armstrong's further justification for breaching the contract and violating the Court's injunction, is that there is a conspiracy to destroy his reputation and that he must therefore utilize self-help to respond. However, Armstrong's remedy for any alleged tort against him *is not* to ignore the Superior Court's injunctions. Rather, as Judge Duryee stated, Armstrong's remedy for any alleged torts would be a claim for damages for defamation or other cause of action.

Indeed, Armstrong filed precisely such a claim, which was also adjudicated against him. In November 1997, as a fugitive from California where warrants were outstanding for his arrest, Armstrong filed an action against the Church of Scientology International in federal court in Nevada sounding in defamation and intentional infliction of emotional distress. The Complaint made essentially all of the same allegations raised in his Opposition Brief herein. (Petitioner's Supplemental Exhibits, Tab 19, Declaration of Andrew Wilson and Ex. S thereto.²) That action was dismissed with prejudice in 1998, and the judgment of dismissal affirmed in 2000 by the United States Court of Appeals for the Ninth Circuit. *Armstrong v. Church of Scientology International* (9th Cir. 2000) 243 F.2d 546.

² See Petitioner's Supplemental Exhibit in Support of Petition for Writ of Certiorari, or in the Alternative, a Writ of Mandamus, Vol. III.

Thus, Armstrong is well aware of the existence of legal remedies to rectify the alleged affronts.

The sole issues before the Court are those raised by the Petition relating to the Superior Court's authority to discharge the contempt and collapse the civil judgements and criminal sanctions. Essentially the entirety of Armstrong's Opposition Brief consists of frivolous justifications for his continuing contempt, which are simply not at issue and should therefore be ignored.

III Armstrong's Contemptuous Brief Demonstrates the Need to Reinstate the Contempt Sanctions

Whatever rights Armstrong possessed to speak, write and communicate with the media or other third parties about Scientology, were bargained away. Armstrong was paid \$800,000 consideration in 1986 to settle then-pending claims and to stop his anti-Scientology hate campaign.

Armstrong took the money, spent it, and now complains of the conundrum in which he finds himself: entering into a contract, accepting the consideration, but claiming it impinges upon his rights to free speech and purported religious beliefs. However, a person may contract away a right, *In re Steinberg* (1983) 148 Cal.App.3d 14, 18-20; *ITT Telecom Products Corp. v. Dooley* (1989) 214 Cal.App.3d 307, 319; *Snepp v. United States* (1980) 444 U.S. 507, 509, fn. 3, as several courts have found that Armstrong has done.

Armstrong fled the jurisdiction to avoid the several contempt findings and sanctions.³ Now, with Judge Duryee's ruling, Armstrong can effectively ignore the injunction because he is judgment proof, and ignore contempt findings against him because no penalty will attach for his contempt of the Court's rulings. Indeed, Armstrong admits in his Opposition Brief that the Superior Court's actions have created these precise effects, stating that Judge Duryee's judgment, "has encouraged Armstrong to continue to express his religious beliefs about the Scientology religion." (Opposition Brief at 28.)

Armstrong's lengthy justification for violation of the Court's injunctions because of his purported religious belief, is not only barred by *res judicata* as noted above, it is also frivolous. To summarize Armstrong's argument:

- he entered into the contract in 1986, and accepted \$800,000 to refrain, *inter alia*, from public discussions and commentary regarding the Scientology religion⁴;

³ Armstrong takes umbrage with the assertion that he fled the jurisdiction because of the court's rulings. Rather, he says he "had to flee abroad" to escape religious persecution (Opposition Brief at 22), *i.e.*, the enforcement of the Court's judgments which he claims are contrary to his purported religious practice, the central tenet of which is breaching the terms of the contract. Armstrong returned to California for the contempt hearing only after his lengthy absence caused the warrants to expire, and the judges who previously found him in contempt had left the bench.

⁴ This was demanded in the contract in exchange for the monetary consideration, because the Church sought to resolve informally

- he spent the money;
- he started a new religion (Opposition at 33) ⁵;
- the central asserted precept of his new claimed religion, is to speak out against the Scientology religion as often as possible, thus breaching the contract; and
- since the contract purportedly violates the precepts of his new claimed religion, he is no longer bound by it. (Opposition at 34.)

Acceptance of his position would utterly negate the constitutional guarantee to citizens to enter into contracts and would trump any commercial transaction if one of the parties to a contract asserted it violated a new found religious belief. If this sort of justification for breach of contract was supported by law, it would take little imagination to predict what the fertile minds of some persons caught in an unfavorable contract could claim, e.g., "I do not have to pay for the car I was sold and set on fire because I have a new-found religious belief that cars are dangerous," or "I don't have to perform by delivering \$800,000 worth of goods for which I was paid because I have new-found religious belief that capitalism is evil," etc.

These examples are no more legally frivolous than the position taken by Armstrong. Armstrong may profess any purported religious belief he

Armstrong's crusade of making thousands of false, defamatory and inflammatory assertions.

⁵ The record reflects no membership in Armstrong's religion but himself.

wants or claims he has created, but he simply cannot take the substantial benefit of a contract, breach the contract based upon his claim of religious belief, and keep the benefits of the contract notwithstanding the breach.

IV The Validity of the Finding of Criminal Contempt Is Not Properly at Issue

Armstrong also improperly argues that the contempts against him were civil and not criminal. As noted above, Armstrong did not file a petition to challenge the court's criminal contempt. Thus, he should not be heard to make such an argument in opposition to the Petition.

In any event, Armstrong is wrong. The distinction between civil and criminal contempt proceedings hinges on the nature of the relief to be afforded. Civil contempts are coercive penalties that may be avoided by compliance with the order and are designed to achieve the object of the order. Punitive measures that cannot be escaped by compliance and are intended to vindicate the authority of the court, are criminal contempts. *In re Ivey* (2000) 85 Cal.App.4th 793, 803; *Culver City v. Superior Court in and for Los Angeles County* (1952) 38 Cal.2d 535.

Armstrong's contempt is not coercive in nature. The contempt order punishes past violations of court orders and is therefore criminal contempt.

V Armstrong's Brief Demonstrates Why the Contempt Orders Must Be Enforced

In this case, the purpose of criminal contempt has been rendered nugatory by the nature of the Court's sentencing, by illegally vacating the

prior contempt sentences and by allowing Armstrong effectively to receive no penalty for his contempts. Armstrong has formally announced that he need not obey the orders of this State: "It is true that [I] disobeyed the Marin Court's injunction on many occasions, and [I] continue[] every day to disobey it." (Opposition Brief at 40.)

Clearly the Court's prior contempt orders, unexecuted, had no effect on Armstrong. But, Judge Duryee's toothless finding of contempt against him and the Court's limitation against any future damages arising out of the contract beyond the \$800,000 Armstrong received, has emboldened him even further. Thus, in his Opposition Brief he flagrantly proclaims that he sees no reason *not to* ignore the Court's injunctions in the future, stating of himself,

Judge Duryee has gone a long way toward validating Armstrong's position regarding the injunction's unlawfulness with her judgment that the liquidated damages provision is unconscionable, and further by bringing Scientology to acknowledge that her judgment "immunize[s Armstrong] from any future liability for breaching a contract he admits having breached well over 200 times, has been adjudicated to have breached 137 times, and which he vows to continue to breach indefinitely in the future."

(Opposition Brief at 40.)

Armstrong concludes that even after more than 200 separate contempts, since he had fled the jurisdiction for years his mere appearance in Court was so praiseworthy that he may now commit as many contempts

as he wishes, with no sanction. As Armstrong understood the proceedings, as stated in his Opposition Brief at page 44:

Among all the other mitigating factors that Judge Duryee could see, it was a mitigating factor to her, mentioned by her, that Armstrong showed up. Sometimes it's good to show up.

Apparently for Judge Duryee it is. But that is not a mitigating factor for any other fugitive who after 8 years finally appears before judge for sentencing. This "mitigating" factor is unprecedented in the law as a basis to vacate all prior sentences imposed, and consider the appearance to be "time served" when not a minute of time was "served."

Nothing could more dramatically demonstrate than Armstrong's own words that the Court's orders over the last several years have created no restraint upon the man. Overtly mocking the Court's injunctions, Armstrong concludes that since "Judge Duryee has immunized Armstrong from any future liability," Scientology should negotiate a new "contract" with him *to compensate him* for all of the potential breaches he intends to make in the future. (Opposition Brief at 46.)

It is a perverse result for a victim to come to court for enforcement of an injunction, have the criminal for the third time held in contempt, and the criminal conclude that since the Court will sentence him but not enforce the sentences, it is time for the victim to give him more money.

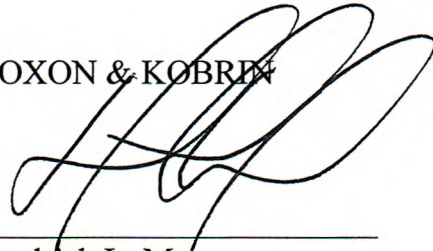
CONCLUSION

This Court should issue a writ of certiorari or of mandamus directing the Superior Court to reinstate in full the three prior contempt sanctions

imposed upon Armstrong. Unless the Court's orders of contempt are enforced, they are utterly pointless.

Dated: February 15, 2005

MOXON & KOBREN

A large, stylized handwritten signature in black ink, likely belonging to Kendrick L. Moxon, is written over the firm name.

By: _____

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International

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action.

On February 15, 2005, I served the foregoing document described as:

**REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI
OR, IN THE ALTERNATIVE, A WRIT OF MANDAMUS**

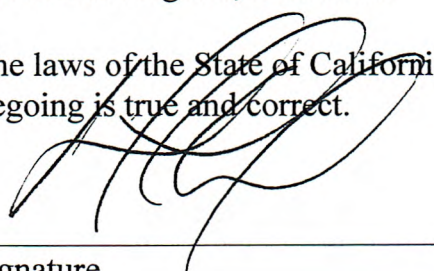
by first class mail, postage prepaid, on interested parties in this action as follows:

Gerry Armstrong
#1-45950 Alexander Avenue
Chilliwack, B.C. V2P 1 L5
Canada

Marin County Superior Court
Hon. Lynn Duryee
3501 Civic Center Drive
San Rafael, CA 94913

Executed on February 15, 2005 at Los Angeles, California.

I declare in accordance with the laws of the State of California, under penalty of perjury, that the foregoing is true and correct.



Signature